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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

PLUS MONEY, INC, and MATTHEW LA MADRID

Defendants,

and

THE PREMIUM RETURN FUND LIMITED-LIABILITY LIMITED PARTNERSHIP, THE PREMIUM RETURN FUND II LIMITED-LIABILITY LIMITED PARTNERSHIP, THE PREMIUM RETURN FUND III LIMITED-LIABILITY LIMITED PARTNERSHIP, RETURN FUND LLC, RETURN FUND II, LLC, RETURN FUND III, LLC, RETURN FUND IV, LLC, RETURN FUND V, LLC, RETURN FUND VI, LLC, PALLADIUM HOLDING COMPANY, and DONALD LOPEZ,

Relief Defendants.

Case No. 08-CV-0764 BEN (NLS)

OPPOSITION OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION TO DEFENDANT MATTHEW LA MADRID'S MOTION TO STAY PROCEEDINGS

DATE: AUGUST 11, 2008
TIME: 10:30 A.M.
PLACE: COURTROOM 3
(HON. ROGER T. BENITEZ)

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Securities and Exchange Commission ("Commission") seeks in this action to enjoin violations of the federal securities laws and to recover – to the extent possible – tens of millions of dollars stolen from trusting investors by Matthew La Madrid. Many of those investors entrusted La Madrid with their lives' savings or the equity in their homes. Many now face the loss of their homes, their retirement savings, or both. The timely and effective prosecution of this lawsuit and prompt, effective work by the court-appointed receiver are the best hope these investors have for at least a partial recovery of their investments.

La Madrid asks the Court to stay this case completely and indefinitely pending the completion of a potential criminal proceeding *that has not actually been filed* – but which he suggests *might* be filed against him at some unspecified point in the future. *See* Memorandum of Points and Authorities In Support Of Motion To Stay Proceedings Pending Resolution Of Criminal Action ("Stay Motion"). Such a result would indefinitely postpone the resolution of this matter, impair and delay the potential recovery of losses suffered by defrauded investors, frustrate the Commission's statutory mission to enforce federal securities laws, and tie the hands of the court-appointed Receiver.

The applicable law is clear. "The Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings." *Keating v. OTS*, 45 F.3d 322, 324 (9th Cir. 1995); accord *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). And a defendant's argument for a stay is "far weaker" when – as is the case here – no criminal charges have actually been filed. *Molinaro*, 889 F.2d at 903. La Madrid acknowledges that *Keating* and *Molinaro* set forth the governing law. Stay Motion at 7. He mischaracterizes their analyses, however, and pointedly ignores their actual holdings – both *Keating* and *Molinaro* held that pending or threatened criminal proceedings did not justify a stay of overlapping criminal proceedings. *Keating*, 45 F.3d at 326; *Molinaro*, 889 F.2d at 903.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 28, 2008, the Commission filed its Complaint in this action, alleging that defendants Matthew La Madrid and Plus Money, Inc. engaged in securities fraud in violation of the Investment Advisers Act of 1940. The claims for relief against La Madrid and Plus Money arise from the Defendants' solicitation and misappropriation of more than $30 million dollars from investors in purported hedge funds known as the "Premium Return Funds".

This Court issued a Temporary Restraining Order ("TRO") against the Defendants and others on April 30, 2008. On May 16, 2008 the TRO was converted into a Preliminary Injunction which, among other things, enjoined La Madrid from future violations of the federal securities laws, imposed an asset freeze, appointed a Permanent Receiver over Plus Money and the Premium Return Funds, and ordered La Madrid to produce a complete and detailed schedule of assets within five days.

La Madrid has refused to provide the schedule of assets required by the Preliminary Injunction. He has declined to file an Answer to the Complaint, although his time to do so has run. Declaration of John M. McCoy III ("McCoy Decl."), ¶¶ 2-3.

La Madrid is also a plaintiff in the action styled *Matthew La Madrid, et al. v. Heriberto Lopez Perales, et al.*, U.S.D.C. (Southern District of California) Case No. 08-CV-0823 BEN (POR) (the "Perales Lawsuit"), which is pending before this Court. In the Perales Lawsuit, La Madrid makes extensive factual allegations regarding events – including his handling of Premium Return Fund investor funds – that are also at issue in this action.

III. ARGUMENT

A. The Supreme Court And The Ninth Circuit Have Held That A Defendant Is Not Entitled To A Stay Even When Criminal Charges Are Pending

The Supreme Court has held that a defendant is not entitled to a stay of civil litigation merely because criminal charges are pending against him. It is well established that parallel civil and criminal proceedings can be brought and pursued against the same defendant "simultaneously or successively." *See Standard Sanitary Mfg. v. United States*, 226 U.S. 20, 52, 33 S. Ct. 9, 16 (1912).

"In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable." *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980). "The Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings." *Keating*, 45 F.3d at 324, citing *FSLIC v. Molinaro*, 889 F.2d at 902, and *Dresser*, *supra* at 1376.

In *Keating*, the Ninth Circuit rejected Charles Keating's argument that overlapping civil and criminal proceedings entitled him to a stay of the civil proceedings. In affirming an administrative law judge's refusal to stay the Office of Thrift Supervision's civil case against Keating, the Ninth Circuit ruled that "[a] defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege. Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding." *Keating*, 45 F.3d at 326, citing *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 1557 (1976).

In *FSLIC v. Molinaro*, the defendant argued that the FBI was investigating the same activities that caused the FSLIC to file a civil action against him. The Ninth Circuit upheld the district court's denial of Molinaro's motion to stay the civil proceeding, holding that while "a district court may stay civil proceedings pending the outcome of parallel civil proceedings, such action is not required by the Constitution" and the decision to stay should be made "in light of the particular circumstances and competing interests involved in the case." *Molinaro*, 889 F.2d at 902 (citations omitted).

In *Keating* and *Molinaro*, the Ninth Circuit identified the factors[1] that generally should be considered when a stay is requested:

(1) the interest of the plaintiff in proceeding with the litigation or any particular aspect of it, and the potential prejudice to the plaintiff of a delay;

(2) the burden which any particular aspect of the proceedings may impose on defendants;

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[1] La Madrid suggests that *Keating* and *Molinaro* apply a *six*-factor test. Stay Motion at 7. This is incorrect. Both *Keating* and *Molinaro* enumerate five factors, not six. Recognizing that the standard actually used by the Ninth Circuit is not favorable to him, La Madrid responds by making up (but attributing to the Ninth Circuit) his own test, one which elevates La Madrid's preference to avoid a formal invocation of the Fifth Amendment into an independent "factor".

(3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;

(4) the interests of persons not parties to the civil litigation; and

(5) the interests of the public in the pending civil and criminal litigation.

See Molinaro, 889 F.2d at 903 (citing *Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53, 56 (E.D. Pa. 1980); *Dresser*, 628 F.2d at 1376; and *United States v. Kordel*, 397 U.S. 1, 90 S. Ct. 763 (1970)); *Keating*, 45 F.3d at 325.

Where – as here – no criminal indictment is pending, "the case for staying civil proceeding is 'a far weaker one.'" *Molinaro*, 889 F.2d at 903, citing *Dresser*, 628 F.2d at 1376. "The possibility that criminal indictments would be brought against Molinaro may have made responding to civil charges more difficult for him, but the court did not abuse its discretion by deciding that this difficulty did not outweigh the other interests involved. Under the circumstances presented to the district court when the motion was made, the court did not abuse its discretion by denying Molinaro's motion for a stay." *Id.*

B. The Factors Identified By The Ninth Circuit Establish That A Stay Is Not Appropriate In This Case

1. A Stay Would Substantially Prejudice The Commission And The Receiver

La Madrid argues weakly that delay would not be prejudicial to the Commission. Stay Motion at 12. The law and common sense both say otherwise.

The Ninth Circuit has held that the Commission has a strong and legally cognizable interest in timely pursuing civil actions to obtain judgments of permanent injunction against La Madrid and other potential defendants, obtain orders that ill-gotten gains be disgorged, and seek the imposition of civil penalties to punish wrongdoers for their violations of the federal securities laws. *See Molinaro*, 889 F.2d at 903; *see also FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1197 (C.D. Cal. 2000) (recognizing government agencies' strong interest in avoiding delay in civil enforcement proceedings). A stay of this action would allow evidence to become stale, witnesses' memories to fade, and missing assets to be further dissipated.

Similarly, the Receiver's efforts to marshal and account for assets stolen from the investors – including the use of discovery from La Madrid to investigate his use and diversion of investor funds – should proceed apace. Indeed, La Madrid has asserted in the Perales Lawsuit that substantial investor funds were misappropriated by individuals and entities other than himself. Depriving the Receiver of the ability to utilize the discovery process and this Court's compulsory authority to pursue those and other assets would drastically undermine the Receiver's ability to fulfill his duties to this Court and the investors. *See* Opposition of Stephen J. Donell, Receiver, To Defendant Matthew La Madrid's Motion To Stay Civil Proceedings Pending Resolution Of Criminal Action ("Receiver's Opp.") at 6-8.

The Commission and the Receiver each have a compelling interest in proceeding expeditiously to protect the defrauded investors, discover the full scope of wrongful conduct, identify and preserve critical evidence, locate and recover assets, and begin the complex and lengthy processing of formulating and implementing relief to mitigate the harm the defrauded investors have suffered and continue to suffer.

Moreover, while La Madrid asserts that this action and the inchoate criminal investigation cover the same subject matter, he clearly has no basis for making such a sweeping generalization. They may well overlap, as both concern La Madrid's fraudulent activities as a purported investment advisor and investment manager. But at this point, even the Commission cannot say with certainty what scope of conduct ultimately will be encompassed by this action. The Commission and the Receiver have received numerous communications from investors suggesting that La Madrid's fraudulent conduct was much broader than what has been alleged in the Complaint. The Commission continues to investigate these allegations and will amend its complaint if discovery reveals appropriate grounds for doing so.[2] McCoy Decl., ¶ 5. The Commission understands that the Receiver is also investigating these additional allegations – an investigation made more timely, costly, and difficult by La Madrid's persistent stonewalling and obstructionism. These investigations would be stymied by a stay of this case – which is precisely why La Madrid seeks a broad, indefinite stay.

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[2] Nor does the Commission know the precise scope of the investigation being conducted by the criminal authorities. Neither, of course, does La Madrid. The Commission notes, however, that the criminal authorities have finite resources that they can devote to this matter and may have enforcement priorities different from those of the Commission. At present, La Madrid is the only person who knows the full range of his own conduct, and his tactical effort to preserve that status quo runs directly counter to the public interest generally and the interests of those who had the misfortune to invest with La Madrid in particular.

2. Proceeding With This Action Will Not Impose An Undue Burden On La Madrid

a) Because No Criminal Proceeding Is Pending, La Madrid's Request For A Stay Is Especially Weak

As previously noted, "[t]he case for staying civil proceedings is 'a far weaker one' when '[n]o indictment has been returned . . .'" *Molinaro*, 889 F.2d at 903, citing *Dresser*, 628 F.2d at 1376. "[A] stay of a civil case is an 'extraordinary remedy,' and 'stays will generally not be granted before an indictment is issued.'" *SEC v. Brown*, No. 06-1213, 2007 WL 4191998 (D. Minn. Nov. 21, 2007) (finding no basis for stay even though defendant had received a "target letter" from the U.S. Attorney's Office). Accordingly, courts routinely decline to stay civil proceedings when a related criminal matter is still in the investigatory stage. *See, e.g., SEC v. Treadway*, No. 04-CIV-3463 WM JCF, 2005 WL 713826, at *3 (S.D.N.Y. Mar. 30, 2005); *In re Worldcom, Inc. Sec. Litig.*, Nos. 02 Civ. 3288, 02 Civ. 4816, 2002 WL 31729501, at *4 (S.D.N.Y. Dec. 5, 2002); *SEC v. Sandifur*, No. C05-1631C, 2006 WL 1719920 (W.D. Wash. June 19, 2006); *SEC v. Rivelli*, No. Civ.A 05-CV-1039-RPM, 2005 WL 2789317 (D. Colo. Oct. 26, 2005).

La Madrid has not been indicted. Indeed, it appears that no indictments whatsoever – of La Madrid or anyone else – have been issued in connection with the investigation La Madrid references. And in the absence of an indictment, the Court has no way of knowing what conduct a hypothetical future indictment might cover *if* it is ever issued. Nor does La Madrid offer anything beyond self-serving hearsay to suggest that an indictment may be "imminent" – no target letter, no plea agreement or proffer letter – which one would normally receive if "fully cooperating" with an ongoing criminal investigation. *See* Motion to Stay at 8 and accompanying Declaration of Joseph N. Casas, ¶ 7 (declaring that La Madrid is "fully cooperating" with USAO's criminal investigation). Nor has the U.S. Attorney's Office intervened to support La Madrid's request for a stay, as might be expected if La Madrid were truly cooperating with an ongoing investigation. Nor does La Madrid explain what the Court should take the term "imminent" to mean in this context. If La Madrid is indicted, does he expect it to occur in a month? In six months? In a year?[3]

This sort of uncertainty is exactly why the Ninth Circuit held in *Molinaro* that the case for a stay in such circumstances is "far weaker" than when there is an actual, pending indictment to define and sharpen the issues. *Molinaro*, 889 F.2d at 903.

b) La Madrid's Own Statements And Conduct Further Undermine His Request For A Stay.

While La Madrid asserts repeatedly that his is "fully cooperating" with the United States Attorney's Office's pending criminal investigation, he provides no concrete facts illustrating such cooperation. But "full cooperation" with the criminal investigation must include at a minimum providing the criminal authorities with factual information about the events in question. And if La Madrid is truly providing such "full cooperation" to the criminal authorities he has waived his Fifth Amendment privilege and has no need to assert it in this proceeding – except to the extent it serves his tactical interest in delay and obfuscation.[4] In other words, La Madrid has no Fifth Amendment interest in withholding in this proceeding facts that he purportedly is disclosing directly to the criminal authorities. His only interest in suppressing the facts in this case is a pecuniary one – an interest to which no Constitutional privilege or protection attaches.[5]

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[3] The absence of an actual indictment is especially significant when one considers that La Madrid argues that this action should be stayed until the "resolution of the AUSA investigation and statute of limitations." Stay Motion at 5: 20-21. As the Complaint in this action alleges conduct continuing at least through March 2007, La Madrid is apparently asking this Court to stay the case until April 2012 (assuming *arguendo* the applicable statute of limitations is five years).

[4] As the Court is aware, the United States Attorney's Office will intervene in and request a stay of civil litigation when it feels the continuation of that litigation will interfere with contemplated or ongoing criminal proceedings – such as by compromising a cooperating witness. Even when the United States Attorneys Office does intervene in Commission enforcement proceedings because there is an active criminal prosecution, courts do not automatically stay discovery. *See, e.g., SEC v. Kornman*, No.Civ.A. 04-CV-1803L, 2006 WL 148733 (N.D. Tex. Jan. 18, 2006); *SEC v. Jones*, No. 04 Civ. 4385(RWS), 2005 WL 2837462 (S.D.N.Y. Oct. 28, 2005). Regardless, it is noteworthy that the criminal authorities with whom La Madrid claims he is "fully cooperating" do not join his request for a stay.

3. Judicial Economy Does Not Warrant A Stay

As he does elsewhere in the Motion, La Madrid ignores relevant authority and instead cites inapposite cases that do not stand for the propositions La Madrid urges. In *SEC v. Mutuals.com, Inc.*, 2004 WL 1629929 (N.D. Tex. 2004), the Court granted a motion to stay filed by the U.S. Attorney's Office (and not opposed by the SEC) on the grounds that maintenance of simultaneous actions would interfere with the efficient prosecution of the criminal matter. *Id.* at *4. The criminal authorities have made no such request here.

Chronicle Publishing Co. v. Nat'l Broadcasting Co., 294 F.2d 744, 747-48 (9th Cir., 1960) is even farther afield. Indeed, the case did not involve parallel criminal and civil proceedings at all – La Madrid's inaccurate characterization of the case not withstanding. In *Chronicle Publishing*, a private lawsuit challenged a proposed merger in the broadcast media field on antitrust grounds. The court stayed the action pending the completion of an ongoing Federal Communications Commission review of the proposed merger. The decision was explicitly grounded in the requirements of complex antitrust litigation and the fact that – regardless of the outcome of the private lawsuit – the proposed merger could not proceed without FCC approval. *Id.* Neither the facts nor the holding of the case have any relevance here.

By way of contrast, *relevant* case law recognizes that an indefinite stay of proceedings is contrary to the efficient use of judicial resources. *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d at 1197; *see also IBM Corp. v. Brown*, 857 F. Supp. 1384, 1392 (C.D. Cal. 1994) ("[a] stay would disrupt the court's calendar by indefinitely postponing trial").

4. A Stay Would Impose A Drastic And Inequitable Burden On Defrauded Investors

La Madrid's argument that a stay would be in the interest of non-parties is disingenuous at best, and is flatly contradicted by all of the relevant case law. The most important non-parties are, of course, the Premium Return Fund investors. The law recognizes and protects the interests of defrauded investors in prompt recovery of restitution or disgorgement and disfavors stays that delay such potential recoveries. *See Molinaro*, 889 F.2d at 903 (victims' interest in prompt recovery weighs heavily against request for stay); *J.K. Publications*, 99 F. Supp. 2d at 1176 (same). La Madrid convinced investors to take second mortgages on their homes and invest the loan proceeds with him, or to entrust him with their retirement accounts and lives' savings. Many now find themselves in dire economic circumstances as a direct result of La Madrid's misappropriation of their savings. Forcing them to wait in limbo while this case is stayed indefinitely – in deference to La Madrid's preference for avoiding hard litigation choices – would be a serious miscarriage of justice. Indeed, La Madrid's cavalier disregard for the hardships to which he has subjected these investors adds insult to their substantial economic injuries.

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[5] Moreover, La Madrid filed an affirmative civil complaint – currently pending before this Court – making affirmative factual allegations about his management of investor funds.

It bears repeating that a stay not only will delay significantly any recovery by the defrauded investors, but also may substantially reduce the amount of any such recovery. To date, the Commission and the Receiver have only located a portion of the misappropriated funds. In his motion and supporting declaration, La Madrid suggests strongly that he may have taken steps to secrete his ill-gotten gains before this action was filed. *See* Stay Motion at 13: 9-10 ("Mr. La Madrid has not attempted to secrete his assets since April 1, 2008 . . ."). To the extent La Madrid has secreted assets, a stay will give La Madrid and his transferees or co-conspirators the opportunity to further dissipate or secrete those assets while the Commission and the Receiver are unable to use this Court's authority to pursue and recover them.[6]

In short, the interests of the non-party investors – the most important consideration before the Court – weigh heavily against the requested stay.

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[6] Of course, the risk that secreted assets may be moved beyond the reach of the Commission and the Receiver is heightened by La Madrid's refusal to company with this Court's order that he provide a detailed schedule of assets. Simply put, La Madrid won't tell the Court where his assets are, and he seeks a stay to obstruct the efforts of the Commission and the Receiver to look for them.

5. The Public Interest Strongly Favors The Timely Prosecution Of This Action And The Denial Of La Madrid's Motion For A Stay

The public interest does not favor a stay. The Commission brought this civil enforcement action in the public interest. The Commission, which is statutorily charged with the enforcement of the federal securities laws in the public interest, has a strong interest in the timely prosecution and resolution of civil enforcement proceedings. A stay would run counter to the public's compelling interest in the fair, efficient, effective, and swift enforcement of the federal securities laws. *See Keating*, 45 F.3d at 325 (recognizing public interest favors timely resolution of civil action and weighs against stay); *Molinaro*, 889 F.2d at 903 (same).

Indeed, in *Keating* – the primary case on which La Madrid relies – the Ninth Circuit held that the public's interest in "a speedy resolution of the controversy" outweighed Keating's asserted interest in avoiding reliance upon his Fifth Amendment rights, and that the compelling public "concern for efficient administration would [be] unnecessarily impaired" by the imposition of a stay. *Keating*, 45 F.3d at 325.

C. Even If A Partial Stay Were Warranted, It Would Be Improper And Unduly Prejudicial To The Defrauded Investors To Stay The Entire Action.

La Madrid's grounds his request for a stay on his concern that he might have to invoke his Fifth Amendment rights if this case is allowed to proceed.[7] But the relief he seeks – a stay of the *entire action* – is far broader than would be necessary to avoid putting him to that choice. La Madrid's Fifth Amendment rights come into play only if he is forced to offer testimony in his defense. There is no justification whatsoever for staying critical aspects of the case – such as third-party discovery or motions to amend the case as necessary to add additional parties and claims for relief. Nor, of course, should any stay preclude the Commission or the Receiver from addressing possible violations of this Court's existing injunction. As discussed in Section B.1, *supra*, such an overbroad stay would improperly tie the hands of the Commission and the

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[7] As noted elsewhere, this choice might be a difficult one for La Madrid, but it is not an impermissible one. "A defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege." *Keating*, 45 F.3d at 326.

Receiver, with potentially disastrous consequences for defrauded investors. *See* Receiver's Opp. at 6-8.

The Commission maintains that any stay would be inappropriate under the standards articulated in *Keating* and *Molinaro*. But should the Court disagree, any stay should limited to discovery or dispositive motions that would require testimonial evidence from La Madrid, and not to discovery or other matters directed to other parties or potential new parties.

IV. CONCLUSION

The interests the Court must balance are clear. On one side of the balance rest the interests of the public in general, and the investors defrauded by La Madrid in particular, in a timely resolution of this case and the continuation of the Commission's and the Receiver's ongoing efforts to limn the scope of misconduct and to locate and secure available assets. On the other is La Madrid's tactical *preference* to avoid some difficult choices about how best to defend this action while concerned about the possibility that he might someday face criminal charges that have yet to be filed.

The facts of this case, as measured against the standards set forth in *Keating* and *Molinaro,* weigh decisively against the requested stay. For all of the foregoing reasons, the Commission respectfully urges the Court to deny La Madrid's motion in its entirety.

DATED: July 25, 2008

Respectfully submitted,

/s/ John M. McCoy III

John M. McCoy III
Attorney for Plaintiff
Securities and Exchange Commission

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

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On July 25, 2008, I caused to be served the document entitled **OPPOSITION OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION TO DEFENDANT MATTHEW LA MADRID'S MOTION TO STAY PROCEEDINGS** on all the parties to this action addressed as stated on the attached service list:

[X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[ ] **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

[ ] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[ ] **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

[X] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[ ] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

[X] **(Federal)** I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: July 25, 2008

/s/ John M. McCoy III
John M. McCoy III

SEC v. PLUS MONEY, INC., et al.
United States District Court – Southern District of California
Case No. 08-CV-0764 BEN (NLS)
(LA-3486)

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